

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. See 86 Ill. Adm. Code 130.1501. (This is a GIL.)

October 13, 2005

Dear Xxxxx:

This letter is in response to your letter received March 11, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

"This letter is being sent in regards to a sales rate that I have been charged incorrectly from purchases I had made thru a mail-order company called ABC located in CITY/STATE."

"Back in Dec. 2002, I had placed an order with the company and was surprised when they had told me the charge for the sales tax amount on my purchase. I questioned the amount and was told that in the past they had not charged the correct amount and was doing so now. Having purchased similar products from another out of state company I continued to question the increase in sales tax thru the Ill. Dept. of Revenues toll free number. They informed that on the web site I could look up Part 130 Re [sic] 130.310 find out what the rulings are in Illinois regarding the purchases of dietary supplements from an out of state location. I also questioned the other out of state company that I order products thru [sic] and found that ABC was incorrectly charging a higher tax rate on there [sic] dietary supplements. I spoke to Robin in there [sic] at ABC and gave her the number to call the Dept. of Revenue so the matter could be resolved. The following month when I placed my order I found that the tax rate was still being charged at the higher rate for the purchases I had made on the dietary supplements. I then again spoke to Robin at ABC and was told I would have to request from the Ill. Dept. of Revenue a Letter of Ruling before they would make any changes to the tax rate. This I did on the Dept. of Revenues [sic] web site. After some time, I wrote a letter to the Department of Revenue because I had not received a reply about the Letter of ruling. A

reply to this letter came in the mail in Sept. of 2004 and I forwarded this letter to ABC. After this I noticed the sales tax rate on my purchase go back [sic] to normal. I then submitted to the company my purchases since Dec. 2002 to show the company that I had over paid over 650.00 in sales tax because of there [sic] error. I asked them to refund the amount that was improperly calculated. Over a Period of a couple of months I was told that they would refund to me \$174. 84 because they did not calculate my purchases of there [sic] product correctly. I told them that they had incorrectly charged me since Dec. of 2002 and the amount was over \$650.00. I was told then [sic] that she would relay that to her supervisors. When I called back the following month I was told then that ABC had contacted the Ill. Dept. of Revenue to find out if they would be required to submit a refund for the amount that they had overcharged other than that of my 2004 PRODUCT purchases."

"This is why I am writing to the Legal Department today. I don't know why this company is expecting me to pay for there [sic] mistake. ABC should have never left it up to a customer/Independent Distributor to find out the proper sales tax rate for products they are selling in Illinois. The company let this drag on over a long period of time resulting in a costly error for me. This to me shows negligence on the part of the employee(s) at ABC. I do not know what legal standings I or the ABC have in this situation and am asking for your reply. I am enclosing to you a copy of the reply from the Dept. of Revenue and the information I sent to ABC about a refund showing my purchases since Dec. of 2004."

#### **DEPARTMENT'S RESPONSE:**

The information contained in our letter to you dated September 14, 2004 remains accurate. When tax has been over collected, it must either be remitted to the Department or returned to the persons from whom it was collected.

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. See 86 Ill. Adm. Code 130.1501. Please note that only persons who have actually paid tax to the Department can file a claim for credit. No credit shall be given the taxpayer unless the taxpayer shows that he or she has borne the burden of the tax or has unconditionally repaid the amount of the tax to the purchaser from whom it was collected.

In other words, if a purchaser has paid tax to a retailer, only that retailer can file a claim for credit. The retailer must first refund tax money paid by the purchaser before proceeding with the claim. Once the retailer has done this, he or she must apply for the credit in the manner described in the regulation. Retailers are not required by law to apply for such credits; rather, this procedure is voluntary. Whether or not the retailer refunds the tax paid and files a claim for credit with the Department is a private matter between the retailer and the purchaser.

In the scenario described in your letter, only the retailer, ABC, can file for a claim for credit or refund. ABC's customers cannot file claims for credit or refund directly with the Department based upon tax that was paid to ABC.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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